



House of Representatives

File No. 600

General Assembly

February Session, 2002

(Reprint of File No. 309)

Substitute House Bill No. 5487
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 1, 2002

AN ACT CONCERNING STATE EMPLOYEE AND CONTRACTOR WHISTLEBLOWING COMPLAINTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-61dd of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person having knowledge of any matter involving
4 corruption, unethical practices, violation of state laws or regulations,
5 mismanagement, gross waste of funds, abuse of authority or danger to
6 the public safety occurring in any state department or agency or any
7 quasi-public agency, as defined in section 1-120, as amended, or any
8 person having knowledge of any matter involving corruption,
9 violation of state or federal laws or regulations, gross waste of funds,
10 abuse of authority or danger to the public safety occurring in any large
11 state contract, may transmit all facts and information in his possession
12 concerning such matter to the Auditors of Public Accounts. The
13 Auditors of Public Accounts shall review such matter and report their
14 findings and any recommendations to the Attorney General. Upon
15 receiving such a report, the Attorney General shall make such

16 investigation as he deems proper. At the request of the Attorney
17 General or on their own initiative, the auditors shall assist in the
18 investigation. The Attorney General shall have power to summon
19 witnesses, require the production of any necessary books, papers or
20 other documents and administer oaths to witnesses, where necessary,
21 for the purpose of investigation. Upon the conclusion of his
22 investigation, the Attorney General shall where necessary, report his
23 findings to the Governor, or in matters involving criminal activity, to
24 the Chief State's Attorney. The Auditors of Public Accounts and the
25 Attorney General shall not, after receipt of any information from a
26 person under the provisions of this section, disclose the identity of
27 such person without his consent unless the Auditors of Public
28 Accounts or the Attorney General determine that such disclosure is
29 unavoidable during the course of the investigation.

30 (b) (1) No state officer or employee, as defined in section 4-141, no
31 quasi-public agency officer or employee, no officer or employee of a
32 large state contractor and no appointing authority shall take or
33 threaten to take any personnel action against any state or quasi-public
34 agency employee or any employee of a large state contractor in
35 retaliation for such employee's disclosure of information to the
36 Auditors of Public Accounts or the Attorney General under the
37 provisions of subsection (a) of this section. [A state or quasi-public
38 agency employee alleging that such action has been threatened or
39 taken]

40 (2) If a state or quasi-public agency employee or an employee of a
41 large state contractor alleges that a personnel action has been
42 threatened or taken in retaliation for such employee's disclosure of
43 information to the Auditors of Public Accounts or the Attorney
44 General under the provisions of subsection (a) of this section, the
45 employee may notify the Attorney General, who shall investigate
46 pursuant to subsection (a) of this section. After the conclusion of such
47 investigation, the Attorney General, the employee or the employee's
48 attorney may file a complaint concerning such personnel action with
49 the Chief Human Rights Referee designated under section 46a-57, as

50 amended. The Chief Human Rights Referee shall assign the complaint
51 to a human rights referee appointed under said section 46a-57, who
52 shall conduct a hearing and issue a decision concerning whether the
53 officer or employee taking or threatening to take the personnel action
54 violated any provision of this section. If the human rights referee finds
55 such a violation, the referee may award the aggrieved employee
56 reinstatement to the employee's former position, back pay and
57 reestablishment of any employee benefits to which the employee
58 would otherwise have been eligible if such violation had not occurred,
59 reasonable attorneys' fees, and any other damages. For the purposes of
60 this subsection, such human rights referee shall act as an independent
61 hearing officer. The decision of a human rights referee under this
62 subsection may be appealed by any person who was a party at such
63 hearing, in accordance with the provisions of section 4-183.

64 (3) The Chief Human Rights Referee shall adopt regulations, in
65 accordance with the provisions of chapter 54, establishing the
66 procedure for filing complaints and noticing and conducting hearings
67 under subdivision (2) of this subsection.

68 (4) As an alternative to the provisions of subdivisions (2) and (3) of
69 this subsection (A) a state or quasi-public agency employee who
70 alleges that a personnel action has been threatened or taken may file an
71 appeal within thirty days of knowledge of the specific incident giving
72 rise to such claim with the Employees' Review Board under section 5-
73 202, or, in the case of a state or quasi-public agency employee covered
74 by a collective bargaining contract, in accordance with the procedure
75 provided by such contract, [An] or (B) an employee of a large state
76 contractor alleging that such action has been threatened or taken may,
77 after exhausting all available administrative remedies, bring a civil
78 action in accordance with the provisions of subsection (c) of section 31-
79 51m.

80 (5) In any proceeding under subdivision (2), (3) or (4) of this
81 subsection concerning a personnel action taken or threatened against
82 any state or quasi-public agency employee or any employee of a large

83 state contractor, which personnel action occurs within one year after
84 the employee first transmits facts and information concerning a matter
85 under subsection (a) of this section to the Auditors of Public Accounts
86 or the Attorney General, there shall be a rebuttable presumption that
87 the personnel action is in retaliation for the action taken by the
88 employee under subsection (a) of this section.

89 (c) Any employee of a state or quasi-public agency or large state
90 contractor, who is found to have knowingly and maliciously made
91 false charges under subsection (a) of this section shall be subject to
92 disciplinary action by his appointing authority up to and including
93 dismissal. In the case of a state or quasi-public agency employee, such
94 action shall be subject to appeal to the Employees' Review Board in
95 accordance with section 5-202, or in the case of state or quasi-public
96 agency employees included in collective bargaining contracts, the
97 procedure provided by such contracts.

98 (d) On or before September first, annually, the Auditors of Public
99 Accounts shall submit to the clerk of each house of the General
100 Assembly a report indicating the number of matters for which facts
101 and information were transmitted to the auditors pursuant to this
102 section during the preceding state fiscal year and the disposition of
103 each such matter.

104 (e) Each contract between a state or quasi-public agency and a large
105 state contractor shall provide that, if an officer, employee or
106 appointing authority of a large state contractor takes or threatens to
107 take any personnel action against any employee of the contractor in
108 retaliation for such employee's disclosure of information to the
109 Auditors of Public Accounts or the Attorney General under the
110 provisions of subsection (a) of this section, the contractor shall be liable
111 for a civil penalty of not more than five thousand dollars for each
112 offense, up to a maximum of twenty per cent of the value of the
113 contract. Each violation shall be a separate and distinct offense and in
114 the case of a continuing violation each calendar day's continuance of
115 the violation shall be deemed to be a separate and distinct offense. The

116 executive head of the state or quasi-public agency may request the
117 Attorney General to bring a civil action in the superior court for the
118 judicial district of Hartford to seek imposition and recovery of such
119 civil penalty.

120 (f) Each large state contractor shall post a notice of the provisions of
121 this section relating to large state contractors in a conspicuous place
122 which is readily available for viewing by the employees of the
123 contractor.

124 (g) As used in this section:

125 (1) "Large state contract" means a contract between an entity and a
126 state or quasi-public agency, having a value of five million dollars or
127 more, except for a contract for the construction, alteration or repair of
128 any public building or public work; and

129 (2) "Large state contractor" means an entity that has entered into a
130 large state contract with a state or quasi-public agency.

This act shall take effect as follows:	
Section 1	<i>from passage</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost	Attorney General; Human Rights & Opportunities, Com.	Potential Minimal	Potential Minimal	Potential Minimal
GF - Savings	Admin. Serv., Dept	Potential Minimal	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits state employees, quasi-public agency employees, and employees of large state contractors who have made whistleblower complaints against their employers who believe they are being retaliated against for their action to notify the Attorney General (AG), who must investigate the allegation, rather than file their allegations with the Employees' Review Board.¹ If the AG is unable to resolve the issue, the employee can file a complaint with the Commission on Human Rights and Opportunities (CHRO).

The cost to the AG and the CHRO to investigate these allegations and hold hearings would be minimal and absorbable within anticipated budgetary resources because few cases are anticipated. Conversely, the expected reduction in the number of hearings held by

¹ Per CGS Section 5-201, the Employees' Review Board is assigned to the Department of Administrative Services (DAS) for administrative purposes only. It is budgeted as an Other Current Expenses account in DAS. The board functions to resolve grievances and disciplinary action issues of permanent state employees not covered under collective bargaining.

the Employees' Review Board would result in minimal savings. An average of 10 cases have been brought to the Employees' Review Board over the last four years. The average cost for each case was \$5,949.

House Amendment "A" reduced the rebuttable presumption from two to one year. In addition, the amendment limited the relief that a human rights referee may award if he finds retaliation. These changes could result in a minimal cost avoidance to the state. The amendment clarified the duties of the Attorney General under the bill. There is no fiscal impact related to this change.

OLR Amended Bill Analysis

sHB 5487 (as amended by House "A")*

**AN ACT CONCERNING STATE EMPLOYEE AND CONTRACTOR
WHISTLEBLOWING COMPLAINTS****SUMMARY:**

This bill establishes a new, alternative process for disposing of allegations of retaliation filed by employees of the state, quasi-public agencies, and large state contractors who have made whistleblower complaints against their employers.

It requires the chief human rights referee to adopt regulations that establish the procedure for filing complaints and noticing and conducting hearing under the new process.

Finally, it creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one years of the complaint.

*House Amendment "A" (1) reduces the rebuttable presumption from two to one year, (2) eliminates a whistleblower's dissatisfaction with the outcome of the Attorney General's investigation as a condition precedent to him, his attorney, or the attorney general filing a complaint with the chief human rights referee; and (3) limits the relief a human rights referee may award if he finds retaliation.

EFFECTIVE DATE: Upon passage

ALTERNATIVE PROCESS FOR RETALIATORY COMPLAINTS

The bill gives whistleblowers who believe they are being retaliated against (or threatened with retaliation) for their action the option of following the current complaint process or a new one. Under the existing process, (1) state and quasi-public agency employees can file allegations of retaliation with the Employees' Review Board or, if they are covered by a collective bargaining contract, in accordance with

contract procedure, and (2) employees of large state contractors can avail themselves of administrative remedies and, if still unsatisfied, bring a civil cause of action.

Under the complaint procedure that the bill establishes, any of these employees alleging retaliation could notify the attorney general, who must conduct an investigation. After concluding the investigation, the attorney general, employee, or the employee's attorney can file a complaint with the chief human rights referee.

The chief referee must assign it to a human rights referee who must conduct a hearing and determine whether the personnel action or threatened action was in retaliation for whistleblowing. If he finds that the action or threatened action was retaliatory, he may order that the aggrieved employee be reinstated to his former position, receive back pay, have his benefits reestablished to the level he would have been eligible but for the violation, receive reasonable attorney fees, and any other damages. Any party may appeal the referee's decision to Superior Court. For purposes of the bill, the human rights referee is an independent hearing officer.

BACKGROUND

Whistleblower Law

Anyone who knows of any corruption, unethical practices, state law or regulation violations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state department or agency, quasi-public agency, or large state contract may send information to the auditors of public accounts. They must review the matter and report their findings and recommendations to the attorney general, who must conduct any investigation he deems proper. The auditors may assist with the investigations.

After his investigation, the attorney general must, when necessary, report his findings to the governor. If the matter involves a crime, he must report it to the chief state's attorney. Neither the auditors nor the attorney general may reveal the name of their informant without his consent, except where it is unavoidable during the course of the investigation.

State officers, employees, and appointing authorities may not take or

threaten to take any negative personnel action against an employee in retaliation for his disclosure of information to the auditors or the attorney general. Any employee who knowingly or maliciously makes false charges can be disciplined or discharged.

Large State Contractor and Contract

A large state contractor is an entity that enters into at least a \$5 million contract with a state or quasi-public agency, other than a contract to construct, alter, or repair a public building or public work.

Legislative History

On April 10 and 17, respectively, the House referred the bill (File 309) to the Labor and Public Employees and Judiciary Committee. The committees reported the bill without change on April 15 and 22, respectively.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 12 Nay 7

Labor and Public Employees Committee

Joint Favorable Report
Yea 9 Nay 3

Judiciary Committee

Joint Favorable Report
Yea 25 Nay 7